No. 62.

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Brf. of Baker & Haseltine for P. E.

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Supreme Court of the United States,

OCTOBER TERM, 1901.

NO. 62.

S. A. AND S. C. HASELTINE, Plaintiffs in Error, vs. THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.	October Term, 1901. No. 62.

Brief for Plaintiff in Error on Motion to Dismiss.

JAMES BAKER. ✓
S. A. HASELTINE,
Attorneys for Plaintiffs in Error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1901.

NO. 62.

S. A. AND S. C. HASELTINE, PLAINTIFFS IN ERROR

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

I.

This writ of error should not be dismissed. The case should be heard on its merits.

II.

As the case is soon to be called on the docket we most respectfully request that the motion be taken up with the merits.

III.

This writ was brought under the second clause of section 5198 of the United States statutes.

At the trial all the facts alleged were found by a referee, undisputed and admitted. There are no disputed facts, nothing to be retried.

The Circuit Court below gave plaintiffs judgment.

The Supreme Court of the State reversed the judgment upon the same facts and denied the plaintiffs in error rights under the United States statutes. The defendants in error admitted in their brief in the Missouri Supreme

Court that they violated the law. The only question of decision, the only question in the case, was the construction of the United States statute. (See page 15 of Record of the opinion of the Court). It says: "The sole defense is that a party who has paid ruinous interest cannot maintain an action, under the statute, to recover twice the amount so paid until he has paid the principal sum due, or at least unless he tenders the principals, and it is admitted that the plaintiffs have not done this."

Was not this case squarely decided by that Court on its merits? Did they not put their construction on this United States statute that deprives these plaintiffs of their rights? On page 19 of the Record the Court says:

"The plaintiffs herein are not entitled to maintain their action, for there is no allegation or proof that they have paid or offered to pay for the debt actually due—that is, the amount actually received by the plaintiffs from the defendants." On page 20 of the record they say: "So regarded, it cuts off the plaintiffs' right to maintain this action." Therefore they expressly hold that the action is at an end, and reverse the judgment, saying (Rec. Page 20):

"The judgment of the Circuit Court is, therefore, reversed, and the case remanded to be proceeded with in accordance herewith."

Was the case ordered retired? No. Any other facts to be found? No. Has the lower court any judicial discretion left? No. The lower court is told the judgment is reversed and the course of action cut off under the law.

IV.

This writ of error is the proper remedy of the plaintiffs. And under Section 709 of the United States statutes it is brought here for review. This law providing for writs of error would be nugatory if the Supreme Courts could prevent this Court from reviewing its decisions by deciding a case on its merits, and then return the case to the lower courts to set aside the judgment and dismiss the action. Such is not the law.

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V.

The law as laid down in Mower vs. Fletcher, 114 U. S., 127, fully sustains this writ of error. This Court says: "That judgment is final for the purposes of a writ of error to this Court, which terminates the litigation between the parties on the merits of the case." * * * Nothing remains to be done but to require the inferior court to perform the ministerial act of entering the judgment in that Court which has been ordered. This is but carrying the judgment of the Supreme Court which has been rendered into execution. Nothing is left to the judicial discretion of the court below. The cases relied on in support of the motions to dismiss were all judgments or decrees of reversal, with leave for further proceedings in the inferior court. "Such judgments are not final, because something yet remains to be done to complete the litigation."

VI.

The statute of limitations of two years from the time of the several payments has elapsed and plaintiffs could not bring another action.

Were not the plaintiffs' rights fully settled by this decision?

In addition to the two-year statute the defendant is no longer in existence. There is now no such bank to be served with summons; hence they could not be sued again in a new action under the statute. Therefore the plaintiffs had no rights left either under their action then prosecuted, except this writ of error. As plaintiffs by said decision are left without remedy. It fully sustains the plaintiffs' writ of error.

Is there any judicial discretion left to the Court below? If this Court affirms the judgment, the plaintiffs' cause of action is ended. If this motion to dismiss is sustained, the plaintiffs are out of Court and without remedy.

The facts all being admitted and undisputed, the only question in the case, and on which all the rights of the parties depends, is the construction of the United States statute.

VII.

Why go over the road again to get to this Court for final settlement? There are no new facts to be determined by a new trial. None to try. No new trial ordered. No other statute to be construed. The Supreme Court of the State has rendered its decision. It is final that plaintiffs' judgment be reversed, and plaintiffs' cause of action be cut off. Therefcre, the concluding order does not deprive the judgment of its finality, or give the Circuit Court any judicial discretion in the matter. The petition stated the facts and they all stand admitted. Can plaintiffs create a new cause of action by paying the debts and bringing a new writ? No; the bank does not exist, and there are no provisions for suing the representatives. Therefore, plaintiffs' rights are fully settled in this action which the Missouri Supreme Court says are "cut off." Hence, we are properly in this Court.

VIII.

If the Court holds that a tender or offer to pay the defendant bank the amount of the face of the note is necessary, and that an amendment is permissible, then plaintiffs ask that said amendment be considered and hereby asked for and made that the case may be ended here. And plaintiffs stand ready to pay the money into court or as the Court may direct. But, as the plaintiffs claim a credit of about $500, on the principal debt in suit No. 63 on this docket, the said money should be held subject to the Court's order. And as the bank is now out of existence, if the money were paid it would leave plaintiffs without remedy on their judgment.

For reasons stated, plaintiffs ask that the motion be not sustained, but that the case be heard on its merits.

JAMES BAKER,
S. A. HAZELTINE,
Attorneys for Plaintiffs in Error.